IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 884 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order2

JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ

5. Whether it is to be circulated to the Civil Judge? : NO

GULAMHUSEIN I CHOPDA

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Petitioner

Mr K G Sheth, AGP for M/S PATEL ADVOCATES for Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 15/12/2000

C A V JUDGEMENT

The present petition has been filed by the

petitioner above named under Article 227 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside the judgment and order dated 21.9.1988 passed by the learned Gujarat Civil Services Tribunal, (for short, 'the tribunal'), Gandhinagar in appeal No.344/87 and further directing the respondents herein to drop the departmental enquiry started against the petitioner.

2. The facts leading to the present petition may be briefly stated as follows:

The petitioner above-named, was working as Dy.Mamlatdar, at relevant point of time, in Dhandhuka Taluka of Ahmedabad District. An agricultural land of village Khasta in that Taluka and District, bearing survey no. 433 admeasuring 3 acres 7 Gunthas, was running in the name of one Natubhai Pratapsingh. An application was made to the Talati-cum-Mantri of the aforesaid Village stating that 35 persons named in the application, were jointly cultivating the aforesaid land since last 5 years and they were also taking crops from the said land by jointly cultivating the same and, therefore, they were having equal share in the said land and, therefore, their names may be introduced in the revenue record of rights as co-owners. Accordingly, the Talati-cum-Mantri of the said village made an entry on 28.5.1981, the date on which the application was received by him, in village Form No.6 at entry no.738. Thereafter, the learned Assistant Collector found as follows:

i. The Talati-cum-Mantri has recorded statements of the persons concerned on 28.5.1981 and had not signed those statements and it was not ascertained as to the village to which those 35 persons belong,

ii. A Panchnama was drawn on 28.5.1981 in presence of three Panchas showing that these persons' named in the said application, used to come to the village very often;

iii. A notice under section 135D of the Bombay Land Revenue Code was issued on 28.5.1981 to Natubhai Pratapsingh, the holder of the land, but no such notice was issued to the persons whose names were sought to be introduced as co-owners;

iv. The aforesaid entry No.738 dated 28.5.1981 was certified on 2.7.1981 by the Dy.Mamlatdar being

In-charge of the aforesaid area;

3. The learned Assistant Collector has further noted that on 30.11.1981, the said occupant-Natubhai Pratapsingh submitted another application showing that the aforesaid land stood jointly in the names of the applicant-Natubhai Pratapsingh and those 35 persons but the agreement for partnership had come to an end on expiry of 5 years and, therefore, names of those 35 persons may be deleted from the records. Those 35 persons also submitted an application on 30.11.1981 to the Talati-cum-Mantri saying that they were occupying the said land as partners for 5 years and the said period of contract has expired and, therefore, they have ceased to act as partners and, therefore, their names be deleted from the revenue record of rights. Learned Assistant Collector further noticed that after receiving these two applications, the Talati-cum-Mantri did not record the date of receipt of the aforesaid two applications, but on 30.11.1981 posted an entry No.755 for deleting the aforesaid names of the said 35 persons without issuing notice under section 135D of the Bombay Land Revenue Code. The learned Asstt.Collector has, thereafter, recorded as follows:

a. Notice under section 135D of the Bombay land Revenue Code was issued but there was no mention as to the village to which those 35 persons belong. However, the notices have been served and signatures have been obtained.

b. For deleting names of those 35 persons, which statement of Natubhai Pratapsingh has been recorded on 30.11.19981.

c. Entry No.755 dated 30.11.19981 referred to hereinabove has been certified by the Dy.Mamlatdar, i.e. the present petitioner on 31.12.1981.

On the aforesaid facts, the Asstt.Collector opined that the first entry on 28.5.1981 and the second entry dated 30.11.1981 have been entered by the Talati-cum-Mantri and they have been certified by the present petitioner.

i. That the land was not being cultivated by the aforesaid persons and, therefore, the statement made by them that they were cultivating the same for 5 years was incorrect.

ii. Though the names are sought to be deleted on a submission that 5 years have been completed, it is not clear as to why the names have not been entered before 5 years (i.e. from the date of commencement of the alleged contract.)

iii. No notice was issued.

iv. Above 35 persons do not reside in this village and though they were not agriculturists, they were being shown as agriculturists and the said act was without any jurisdiction.

Thereafter he concluded that since the reverse entry has been made, there was no question of revision of the matter and, therefore, the chapter may be treated to be closed and the order may be communicated to the persons concerned. It seems that on the strength of the aforesaid orders, departmental enquiry proceeded against the petitioner. The enquiry was conducted in accordance with rules. The allegation against the petitioner was that when he was Dy.Mamlatdar at the relevant point of time, the aforesaid entries were posted in the revenue records, in respect of those 35 persons, whose names are indicated at pages 18 and 19. That the aforesaid entries were posted and certified as aforesaid and the entries were certified by the petitioner himself. That these persons did not possess any agricultural land within 12 kms. from the village in which the above land is situated. That with a view to treat them as agriculturists and in violation of provisions contained in Section 63 of the Bombay Tenancy & Agricultural Act, 1948, the aforesaid entries were posted, that no evidence was recorded. It was not ascertained as to whether the petitioners have actually stayed in this village. As stated earlier, the matter was not properly verified that even the Government had issued circular dated 25.4.1966 to insist upon the Registered Documents for making entry in the revenue record of rights except in cases of succession. That even that circular was bypassed or was overlooked. That there would be indirect attempt to extend the benefit with respect to stamp duty as names were entered without any document requiring appropriate stamps. That notices under Section 135 of the Bombay Land Revenue Code were not issued. No evidence was recorded and the petitioner acted without jurisdiction and has first certified the first entry and also certified the second entry without following the above procedure and it appears that he has gained something out of those two entries. The petitioner was given

reasonable opportunity of being heard at the enquiry. Evidence was recorded and at the end of the enquiry, the Inquiry Officer submitted his report on 2.4.1987 showing that it was not proved that the petitioner acted to gain something but the aforesaid entries were certified though they were contrary to the law and they were made in violation of the provisions contained in section 63 of the said Act. That the stamp duty has also been saved and the entries have been certified with a view to extend benefits to the persons, with respect to the said stamp duty, as transfer entries have been made without any document requiring stamp duty and registration.

4. On the basis of the said report, show cause notice was issued to and served upon the petitioner. It appears that copy of the Inquiry Officer was supplied to the petitioner and after hearing the petitioner, the disciplinary authority came to the decision that so far as the factual aspects are concerned, the findings were correct and, therefore, he confirmed the findings of the Inquiry Officer and passed the order on 29.6.1987 placed at Annexure 'D' at page 26 and directed that the petitioner be degraded to the post of Clerk in exercise of powers conferred on him by rule 7(3) of the Gujarat State Civil Services (Discipline & Appeal) Rules, 1971 read with Rule 6 of the said Rules. The petitioner was dissatisfied by the aforesaid order of the learned Collector being the disciplinary authority, and hence he preferred appeal being Appeal No.344/87 before the Gujarat Civil Services Tribunal at Gandhinagar. The learned tribunal heard the learned Advocates appearing on behalf of both the sides and came to a decision that the findings were correct. However, the learned tribunal found that it was a case of negligence on the part of the petitioner and, therefore, recorded order dated 21.9.1988, allowing the appeal partly and reducing the punishment imposed on the petitioner. Therefore, instead of degradation to the post of Junior Clerk permanently, the learned tribunal imposed a punishment of degradation of the petitioner to the post of Junior Clerk fir a period of 3 years from the date of the order i.e. 29.6.87 with a further direction that during the period of reduction, there will not be any annual normal increment.

5. Being aggrieved by the judgment of the tribunal, the petitioner has preferred this petition. It has been mainly contended here that there was no charge of negligence against the petitioner and, therefore, the tribunal was wrong in holding that the petitioner was guilty of negligence. That there was no dishonesty or

malafide attributed to the petitioner and, therefore, no punishment can be imposed on the petitioner. It is further contended that the Talati-cum-Mantri had initially posted the entry which was confirmed by the petitioner and yet the Talati-cum-Mantri has not been dealt with departmentally. That the charge has not been proved as framed. It is further contended that even the learned tribunal has committed error in holding that the petitioner was negligent in the aforesaid matter. It is further contended that this was a quasi-judicial function of the petitioner and, therefore, he could not be departmentally dealt with. On the aforesaid submission, it has been prayed that the present petition be allowed and the orders of the tribunal be set aside and the petitioner be exonerated outright.

6. On receiving the petition, rule was issued and Mr K G Sheth, learned AGP has appeared in response to the service of rule. I have heard Mrs. K A Mehta, learned Advocate for the petitioner and Mr K G Sheth, learned AGP for the respondents and have perused the papers.

7. The facts are not at dispute and there cannot be any dispute that the aforesaid agricultural land stood in the name of one Natubhai Pratapsingh and the entry was posted on 28.5.1981 introducing 35 persons in the revenue records of rights. Then there was subsequent entry made on 30.11.1981 deleting names of those 35 persons. Both the entries were certified by the petitioner. There is no dispute on the aforesaid factual aspects. Mrs K A Mehta, learned Advocate for the petitioner has argued at length that there was no charge of negligence against the petitioner and, therefore, the petitioner could not be held guilty for the charge of negligence.

8. As against this, the learned AGP has argued that the charge of negligence has to be treated to be of lighter than the charge faced by the petitioner. Therefore, it would not be wrong for the tribunal to punish the petitioner for a lighter charge. It is not much in dispute that the charge, which was levelled against the petitioner and the charge which is held to be proved against the petitioner by the disciplinary authority is graver than the charge for which the petitioner has been punished by the tribunal. Therefore, when the higher charge has been placed and a person is found guilty for lower charge, framed, it cannot be said to be an illegal act on the part of the authority which passes such an order. Therefore, the petition cannot be allowed on the aforesaid consideration.

9. It is then contended that there was no dishonesty or malafide on the part of the petitioner. The learned tribunal has clearly held that there was no dishonesty or malafides proved against the petitioner. This is a question of fact and it is not for this court to differ from the view taken by the learned tribunal. Simply because there was no dishonesty or malafide, it cannot be said that there was no negligence. Therefore, simply because there is absence of dishonesty or malafide, this point cannot come to the rescue the petitioner. Mrs. Mehta, further argued for the petitioner that no departmental action has been taken against the Talati-cum-Mantri who posted the initial entry in the revenue record at the first instance as well as in the second instance. There appears to be no dispute in this regard. However, the Talati-cum-Mantri has not been departmentally dealt with and it cannot be successfully argued before this court that departmental action could not have been taken against the petitioner. It is an admitted position that the petitioner was enjoying a higher responsibility of certifying the entries. It was his function and duty to verify the correctness thereof. It seems that he did not verify properly and instead, certified the same without due verification. If the entries posted by the Talati-cum-Mantri are to be mechanically certified by the higher officer, then, the entire object of making provision for certification of the entry would be frustrated. Even otherwise, simply because no action has been taken departmentally against the Talati-cum-Mantri, it cannot be said that no action could have been taken against the petitioner.

10. It has further been argued that the charge of negligence or carelessness has not been established against the petitioner. It is very clear that on one single day, the application was received for introducing names of 35 persons in the revenue record in respect of the said land and entry was posted introducing those 35 persons on the same day and it was certified by the petitioner without verifying the same. On the other day, reverse entry was posted and the names of those 35 persons were omitted and that entry was also certified by the petitioner. It would be material to note that names of 35 persons may be gathered from order at Annexure 'D' dated 29.6.1987, at page 26. Even on a bare look at the list of the names of those 35 persons, it can be gathered and it can be very easily said that these persons do not belong to one family. They do not belong to one caste also. There is absolutely nothing common amongst them. Therefore, one would certainly question as to whether names of those 35 persons were really required to be

introduced as partners or co-owners in respect of the aforesaid land. It has to be born out that these persons were not agriculturists and they have no land and they have no interest in the said land, yet, their names have been introduced as co-owners. Once these 35 persons find their names in the revenue record of rights, they may claim themselves to be agriculturists and on the strength of this entry, they could purchase agricultural land which is otherwise prohibited under section 63 of the said Act, since the said provision make it clear that non-agriculturists cannot purchase agricultural lands without process of law provided therein. Moreover, if some persons subsequently purchase any agricultural land from these persons, then again there would be complications in future, if these 35 persons are ultimately not treated to be agriculturists. So there would be serious complications and, therefore, it would be necessary before posting and certifying the entry to ascertain as to whether it is really necessary and legal to enter their names as the owners or co-owners or partners of agricultural land. Considering this aspect of the case, it is clear that the petitioner totally omitted to consider a single aspect of the case at the time of certifying the said entry.

11. It, therefore, becomes very clear that the petitioner acted with negligence in certifying the said entry. Apart from the aforesaid proposition, the records show that the Government has issued circular to the effect that the entries are required to be posted only on the strength of documents. No such registered documents were there and there is no dispute about the same. Even procedural aspects have not been properly followed. Without following the said procedure, the entry has been verified at two occasions by the petitioner. This makes it clear that the petitioner has acted with negligence. This aspect has been elaborately discussed in his order by the learned Collector, who passed the order in question as disciplinary authority. It can also be gathered from the report of the Inquiry Officer and even the tribunal has extensively dealt with this issue and recorded the findings that the petitioner was guilty of negligence. It would be relevant to refer to the observation of the tribunal at page 3 of the judgment as follows:

> "The matter was finally heard on 6.9.1988. Learned advocate Shri M N Vachharajani appeared on behalf of the appellant. Shri R P Neve remained present on behalf of the respondent

> Collector. At the outset the learned Advocate narrated the facts of the case. The learned advocate averred that from a perusal of the appellant's reply dated 25.2.1986 it is obvious that at worst the appellant was guilty of negligence but not of misconduct."

12. Considering the aforesaid aspects of the case, it has to be held that the learned tribunal cannot be treated to have committed any illegality in recording the finding that the petitioner was guilty of negligence. So on the one hand the petitioner was rightly found to be guilty of negligence, on the other hand, the charge of negligence is lesser than the charge levelled against the petitioner. Therefore, the tribunal was right in holding that the petitioner was guilty of the said charge and in punishing the petitioner for the said charge. It is to be seen that the tribunal was acting as authority in appeal and, therefore, this aspect can be appropriately considered in appeal by the tribunal. Therefore, the tribunal cannot be treated to have proceeded beyond the scope of jurisdiction and the findings and the ultimate order of the tribunal cannot be treated to be without jurisdiction.

13. Even otherwise, these findings have been recorded by the aforesaid authority as Inquiry Officer, as disciplinary authority as well as Appellate Authority and these are the questions of fact and, therefore, also this Court cannot exercise its powers and jurisdiction under Article 226 of the Constitution to go into a detailed discussion with respect to the act of negligence on the part of the petitioner. When the Court broadly agrees with the findings and reasoning of the lower authority, it would not be necessary to go into a detailed discussion and to reiterate and repeat the observations made by the original authorities.

14. It is well settled that it is not open to this Court to disturb the findings of facts and to re-appreciate the evidence while exercising powers and jurisdiction under Articles 226 and 227 of the Constitution of India. The findings that the petitioner has passed the orders certifying the two entries without application of mind and without following any procedure and bypassing government circulars referred to hereinabove, are all findings of facts based on evidence on records. It cannot be said that the above findings have arrived at without any evidence or material. It is thus, not a case of no evidence and, therefore, this

Court cannot lightly alter the findings of the learned Tribunal. This Court cannot go into the issue of sufficiency of evidence. It can consider if the findings are based on no evidence. It cannot be said even for a moment that the learned tribunal has recorded findings of negligence on the part of the petitioner without having any evidence or material for arriving at such a finding.

15. Mrs K A Mehta, learned Advocate for the petitioner has thereafter, argued that the petitioner was acting as quasi-Judicial Officer and the decision was quasi-judicial decision and, therefore, departmental action cannot be taken against him for his quasi-judicial decision. In support of this argument, she has relied upon the observations made at paras 42, 43 and 44, by the Apex Court in the case of Zunjarrao Bhikaji Nagarkar v. Union of India (AIR 1999 SC 2881) There it was broadly observed that the person concerned cannot be dealt with departmentally for his incorrect or wrong interpretation of the provisions of law. It would be worthwhile to refer the following observations made in the said judgment:

> "It was not the case that the appellant did not impose penalty because of any negligence on his part but he said it was not a case of imposition of penalty. When penalty is not levied, the assessee certainly benefits. But ita cannot be said that by not levying the penalty the officer has favoured the assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. Record in the present case does not show if the disciplinary authority had any information within its possession from where ita could form an opinion that the appellant showed 'favour' to the assessee by not imposing the penalty."

16. There is no question of differing from the aforesaid statutory observations of the Apex Court. At the same time, this Court does not go into the correctness of the decision recorded by the petitioner as quasi-judicial authority, but the conduct of the petitioner in dealing with the matter with an element of negligence in discharge of the said duty, has to be taken

into account. For the aforesaid purpose, it would be relevant to refer to a decision in the case of Union of India vs. K K Dhavan (1992) 2 SCC 56 as well and in the case of Union of India v. A N Saxena (1992) 3 SCC 124.

17. There it has been very clearly laid down that the Court cannot go into the correctness of the decision recorded by the quasi-judicial authority. At the same time, the conduct of the person concerned can be gone into through departmental enquiry. In the present case also we find that the learned tribunal has recorded finding of fact that there was negligence on the part of the petitioner in carrying out the aforesaid function of certifying the said entries on two occasions. This is a finding of fact and there is no reason to interfere with the said finding of fact. The said finding of fact is based on the evidence adduced before the Inquiry Officer and the same has not been successfully challenged even before the learned tribunal by the petitioner. In that view of the matter, the fact of negligence has been amply established and once the fact of negligence has been established and when it is held to have been proved by the tribunal and when the tribunal was acting as a tribunal of appeal, it had jurisdiction to alter the punishment by holding that the petitioner was guilty of the charges of gross negligence. In that view of the matter, when the said finding has been arrived at, it cannot be interfered with in this petition, when the court is exercising its extraordinary powers and jurisdiction under Article 227 of the Constitution of India.

18. In the above view of the matter, in my opinion, the learned tribunal has not committed any error in arriving at the aforesaid decision in holding that the petitioner was guilty of negligence.

19. It has next been contended that there was delay in taking up the matter at the departmental enquiry. Now, it appears that the entries were certified as aforesaid and the matter had come up before the Assistant Collector, Dholka in August, 1984. Thereafter, the proceedings of departmental enquiry have been commenced and they have been concluded by the Inquiry Officer when he recorded his finding and submitted his report on 02.4.1987. It was followed by show cause notice as well as by final order recorded by the Collector at Ahmedabad (Rural) on 29.6.1987. Therefore, looking to the nature of the allegations levelled against the petitioner and looking to the facts and circumstances, it cannot be said

that there was undue or inordinate delay in commencing the proceedings and in concluding the same. Even this aspect does not appear to have been taken before the learned tribunal, which was acting as a tribunal of appeal. Therefore, also, it is not even proper to take up this defence for the first time in this petition. Apart from the aforesaid position, in my opinion, there is no case for arguing that undue or inordinate delay has been caused, in commencing and in concluding the departmental proceedings against the petitioner.

20. With respect to the quantum of punishment, it has to be seen that while passing final order, the disciplinary authority i.e. the Collector, Ahmedabad (Rural), has recorded a punishment degrading the petitioner to the post of Clerk. However, while hearing and disposing of the appeal, the learned tribunal has considered this aspect of the case and since the charge of negligence is held to have been proved by the tribunal, it has reduced the quantum of punishment. It is to be seen that as per the first order, if the disciplinary authority, the petitioner met with a penalty of permanent reversion to the post of Junior Clerk. However, by modifying the said order or punishment, the tribunal has inflicted penalty of reversion of the petitioner to the post of Junior Clerk for a period of three years from the date of order dated 29.6.1987 with further direction that during the period of reduction, the petitioner will not be permitted to draw normal annual increment. This shows that even stoppage of increment does not carry future effect. Therefore, it is not a permanent loss to the petitioner either in gaining the increment or in the matter of reversion to the lower cadre. Therefore, even the quantum of punishment cannot be treated to be harsh, considering the nature and the delinquency of the petitioner. Therefore, viewing the matter from all corners, in my opinion, there is no case for interference by this court exercising powers under Article 227 of the Constitution of India and in my opinion, the tribunal has considered all particulars and grounds as tribunal of appeal and since this court is not sitting as Court of Appeal over the judgment and order of the tribunal, it has to held that the judgment and order recorded by the tribunal are not illegal and erroneous and, therefore, that cannot be quashed and set aside.

In the result, there is no merit in the present Special Civil Application and the same is accordingly dismissed. Rule is discharged. No order as to costs.

15.12.2000 [D P Buch, J.]
msp